

**Follow-up on Matters Raised at the 4th Meeting of
the Bills Committee on Electronic Transactions Bill
held on 12 November 1999**

Introduction

This paper addresses three issues raised by Members at the meeting of the Bills Committee held on 12 November 1999.

Clause 41(2)(b)

2. We have explained to Members that Clause 41(2)(b), which concerns the dis-application of the provision on obligation of secrecy in situations where information is disclosed for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to instituting such proceedings, will not alter the legal obligation under various prevailing ordinances with regard to disclosure of information for law enforcement purposes. In other words, this clause does not create a new obligation to disclose information where such obligation does not already exist under other prevailing law. Members considered that we should re-draft this clause to clearly reflect our legislative intent.

3. We shall propose a Committee Stage Amendment to amend the sub-clause to the effect that the provision of secrecy is dis-applied in situations where information is disclosed for the purpose of any criminal proceedings in Hong Kong or for the purpose of complying with a requirement made under a rule of law with a view to instituting such proceedings.

Duplication of Private Key

4. Members sought clarification on whether duplicating a private key of another person would constitute a criminal act and whether this type of cases is covered by existing legislation so that prosecution may be taken against offenders. Examples of offences are set out in paragraphs 5 to 8 below.

5. Under the Crimes Ordinance (Cap. 200), if a person duplicates another person's private key and uses it to make a false instrument with the intention to using it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, then the first person commits the offence of forgery and is liable on conviction upon indictment to imprisonment for 14 years. "Instrument" is defined in the Ordinance to include any disc, card, tape, microchip or other device on or in which information is recorded or stored by mechanical, electronic, optical or other means.

6. If the offender uses the duplicated private key or information about the private key to deceive other persons, which amounts to dishonestly obtaining services or pecuniary advantage from another person, or property belonging to another with the intention of permanently depriving the other of it, the offender commits the offence of deception under the Theft Ordinance (Cap 210) and shall be liable on conviction upon indictment to imprisonment for 10 years.

7. If the offender uses the duplicated private key or information about the private key and with the intent to defraud, induces by deceit another person to commit an act or an omission which results either -

- (a) in benefit to any person other than the second-mentioned person; or
- (b) in prejudice or a substantial risk of prejudice to any person other than the offender,

then the offender commits the offence of fraud under the Theft Ordinance

(Cap 210) and is liable on conviction upon indictment to imprisonment for 14 years.

8. There are thus provisions under existing legislation to deal with crimes arising from the duplication of another person's private key or the use of information about another person's private key without the owner's consent.

Clause 19(4)

9. Members considered that we should more clearly define the circumstances under which the waiver in Clause 19(4) of the Bill in respect of application for recognition as recognised certification authority may be exercised. We note Members' comment and shall propose a Committee State Amendment to Clause 19(4) to the effect that the Director of Information Technology Services may invoke the waiving provision only for the purpose of facilitating the recognition in Hong Kong of certification authorities licensed, registered or otherwise recognised in a place outside Hong Kong if there is recognition in that place on a reciprocal basis of certification authorities recognised in Hong Kong.

**Information Technology and Broadcasting Bureau
November 1999**